

Approved as Submitted: May 18, 2005

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL  
AND SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES – MAY 4, 2005**

**CALL TO ORDER**

Mayor/Chairman Kennedy called the special meeting to order at 6:00 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Grzan, Sellers, Tate and Mayor/Chairman Kennedy

**DECLARATION OF POSTING OF AGENDA**

Deputy City Clerk/Agency Secretary Tewes certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council and Redevelopment Agency Action***

**CLOSED SESSIONS:**

Acting City Attorney/Agency Counsel McClure announced the below listed closed session items:

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 4

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:02 p.m.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 7:04 p.m.

**CLOSED SESSION ANNOUNCEMENT**

Acting City Attorney/Agency Counsel McClure announced that no reportable action was taken in closed session.

## **SILENT INVOCATION**

## **PLEDGE OF ALLEGIANCE**

## **RECOGNITIONS**

Mayor Kennedy presented Certificates of Recognition to the organizations and agencies that contributed to the construction of the Jasmine Square Playground. Accepting the certificates were Larry Drury of Go Kids; and Holly Martindale of Home Depot. Not in attendance to receive recognition was Whitney Hampton of Kaboom.

## **PROCLAMATIONS**

Mayor Kennedy presented a proclamation to Mary Jane and Patti, advice nurses with Kaiser Permanente Medical Group South Bay Regional Appointment & Advice Call Center declaring May 6 thru May 12, 2005 as *National Nurses Week*.

Mayor Kennedy presented a proclamation to Deputy Director of Public Works Mori Struve, declaring May 15 thru May 21 as *National Public Works Week*.

Mayor Kennedy presented a proclamation to Deputy Director of Public Works Karl Bjarke declaring May 15 thru May 21 as *Bike to Work Week*.

Mayor Kennedy presented a proclamation to Chief of Police Cummings, Sergeant Mark Brazeal, Officer Greg Dini and Officer David Ray declaring May 15 thru May 21 as *National Police Week*.

Mayor Kennedy presented a proclamation to Chief of Police Cumming and Lead Dispatcher Paula Rodriguez declaring April 10 thru April 16 as *National Telecommunicators Week*.

## **PRESENTATIONS**

Linda Roma with the American Cancer Society was not in attendance to present her report on the upcoming Relay for Life scheduled for May 21, 2005.

## **INVITATION**

Recreation Supervisor Therese Lugger and Nancy Domnauer, invited the City Council and the community to the sixth annual Art a La Cart & Children's Fair scheduled for May 14, 2005 at 11:00 a.m.

## **CITY COUNCIL REPORT**

Mayor Kennedy indicated that he is an alternate Board Member to the Valley Transportation Authority (VTA). He stated that recently, the City for Morgan Hill received a presentation from VTA staff on

their long range capital improvement program (CIP). He said that the Council discussed the CIP and a series of recommendations. He stated that a letter was sent to Carolyn Gonot, Chief Development Officer of the VTA. He read the letter into the record which stated that under the expenditure priorities, the proposed VTA program relies on the premise that revenues from a new permanent ½ cent sales tax would become available in April 2007. This would allow delivery of all CIP projects in the 2000 Measure A program. Under this scenario, the BART expansion through San Jose/Santa Clara is considered a top priority and would be completed in 2015. Other projects in the Measure A program that benefit the more rural portions of the County such as South County Caltrain service upgrades, Caltrain electrification, and zero emission buses would not occur until the later half of the 30 year expenditure program. He stated that the recent public opinion survey on transportation issues and the sales tax increase reveals that South County voters value Caltrain equally to BART. While the City of Morgan Hill supports the goal of bringing BART into Santa Clara, it does not want to see the BART extension constructed at the expense of other transit projects in the transit capital expenditure plan or the VTP 2030 Plan. It was felt that cities receiving enhanced benefits from BART should provide a financial contribution. The portion of BART from Alum Rock to Santa Clara is planned to run underground. It is felt that the city or cities advocating or benefiting from an enhanced configuration should develop a local funding mechanism to pay for the gap between the most cost effective approach and the selected approach. Further, that this principal should be applied for any situations where the selected approach is not the most cost effective. The remainder of the cities and the County should not forgo transportation improvements that would benefit their residence at the expense of providing a higher cost benefits to residents in another city. He said that it is felt that VTA should have a backup plan in the event that the permanent ½ cent sales tax fails. The public needs to be made aware of the consequences of failing to pass the sales tax measure. It is recommended that the expenditure plan emphasis the need for double tracking to accommodate reverse commute service as part of South County Caltrain service upgrade. VTA should continue to work with the Union Pacific Railroad on double tracking and reverse commute strategies and that the timing of double tracking through the City of Morgan Hill should be moved up in the overall schedule. He indicated that the letter was sent to the VTA Board of Directors and to VTA staff.

#### **CITY COUNCIL SUB-COMMITTEE REPORT**

None

#### **CITY MANAGER REPORT**

City Manager Tewes reported a correction on Consent Calendar, item 3, page 30, contracts for review of the Coyote Valley Specific Plan. He stated that the contract with Roger Beers should be revised to a not to exceed \$30,000 amount. He requested that the approval of the Consent Calendar reflect this correction.

#### **CITY ATTORNEY REPORT**

Acting City Attorney McClure stated that he does not have a report to present this evening.

## **OTHER REPORTS**

Mayor Pro Tempore Tate announced that the annual Relay for Life is scheduled for Saturday, May 21, 2005. He indicated that Relay for Life is a 24-hour walk moved from Community Park to the Oakwood Academy School. He indicated that teams are recruited and that all members in the team raise money from the public for the American Cancer Society for cancer research. He said that this event is a wonderful/moving experience to be a part of. If one cannot participate, he encouraged the sponsorship of a Relay for Life walker.

## **PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Rosanne Macek, Morgan Hill Community Librarian, announced that Measure A passed with 72% of the vote. This measure provides some funding for the Santa Clara County Library to which Morgan Hill is a part. She stated that the success of the measure was due to many hardworking volunteer groups. She thanked Mayor Pro Tempore Tate for co-chairing the countywide campaign. She acknowledged Burt Berson, Library Commissioner, Carol O'Hare, president of the Friends of the Library who co-chaired the local campaign group, and Vickie Reader who coordinated over 150 individuals who made phone calls to remind voters to get their ballot measures mailed in. Passage of the measure will result in the continuation of library services in Morgan Hill at the current level and not have to institute some of the cutbacks that were being looked at.

No further comments were offered.

## ***City Council Action***

### **CONSENT CALENDAR:**

Council Member Grzan requested that item 2 be removed from the Consent Calendar.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1 and 3-11 as follows:*

1.        **BI-ANNUAL VACANCY SURVEY**

**Action:** **Established** the Bi-Annual Vacancy Rate for April 2005 as Recommended by the Planning Commission.

3.        **ASSISTANCE WITH REVIEW OF THE COYOTE VALLEY SPECIFIC PLAN**

**Action:** 1) **Authorized** the City Manager to Execute the Agreement between the City of Morgan Hill and Fehr and Peers, Transportation Consultants, Subject to Review and Approval by the City Attorney; 2) **Authorized** the City Manager to Execute the Agreement between the City of Morgan Hill and the Law Office of Roger Beers, Subject to Review and Approval by the City

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Attorney; and 3) **Appropriated** ~~\$50,000~~ **\$30,000** within the General Plan Update Fund for these Agreements (amended contract amount as recommended by City Manager).

4. **MONTEREY UNDERGROUND UTILITIES DISTRICT**

**Action: Directed** Staff to Notice the Required Public Hearing to be held on June 1, 2005 for the Formation of an Underground Utility District along Monterey Road between Dunne Avenue and Cosmo Avenue, per City of Morgan Hill Municipal Code, Chapter 12.12.

5. **SECOND AMENDMENT TO COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE AGREEMENT**

**Action: Directed** City Manager to Execute the Agreement with the County, Subject to Review and Approval by the City Attorney.

6. **2004 ANNUAL CONSUMER CONFIDENCE REPORT REGARDING WATER QUALITY**

**Action: Information Only.**

7. **APPROVAL OF WELL ACCESS AGREEMENT WITH SANTA CLARA VALLEY WATER DISTRICT (SCVWD) FOR WELLS AT MISSION RANCH DEVELOPMENT (APN: 728-32-008)**

**Action: 1) Approved** Well Access Agreement with the SCVWD at the Mission Ranch Development; and 2) **Authorized** the City Manager to Execute Agreement; Subject to Review and Approval by the City Attorney.

8. **REVISION TO BURROWING OWL PLAN**

**Action: Approved** the Plan Revision.

9. **AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF JORGENSEN, SIEGEL, McCLURE & FLEGEL, LLP**

**Action: Authorized** the City Manager to Execute an Amended Agreement with the Law Firm of Jorgenson, Siegel, McClure & Flegel, LLP.

10. **ADOPT ORDINANCE NO. 1722, NEW SERIES**

**Action: Waived** the Reading, and **Adopted** Ordinance No. 1722, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 13.04 (WATER SYSTEM) OF TITLE 13 (PUBLIC SERVICES) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING WATER METERS FOR MULTI-UNIT DWELLINGS.**

11. **SPECIAL CITY COUNCIL MEETING MINUTES OF APRIL 20, 2005**

**Action: Approved** the Minutes as Written.

## **2. AUTO DEALERSHIP STRATEGY**

Director of Business Assistance and Housing Services Toy indicated that in March 2005, the Council adopted a policy that stated that by April 2005, the Community & Economic Development Subcommittee will evaluate the adopted auto dealership strategy and recommend revisions, if appropriate, and suggest a strategy for implementation. He informed the Council that the subcommittee met several times to come up with revisions to the strategy. The recommendation before the Council this evening is that the Council direct staff to meet with the neighborhood and the property owners to receive their feedback and discuss issues further. He indicated that meetings have been held with the property owners and neighborhood residents. He stated that the subcommittee felt that additional meetings were warranted to discuss additional issues and to receive additional feedback. The subcommittee would then be able to put together a recommendation to the Council. He said that the area residents still have concerns regarding impacts on their residences and their roads should Walnut Grove be extended. He stated that the residents indicated that they were open to discuss issues, but expressed concern about additional auto dealerships in this area. It is staff's hope to clarify some of the issues and talk about issues in detail at the meetings (e.g., buffer zones, lighting, road alignments, acceptable uses, buffer zones that would include landscaped areas and/or, housing, etc.). It is not known how many meetings would be held with the property owners and residents in the neighborhood. It is staff's belief that residents are willing to discuss the issues. However, he does not know if they are willing to compromise or reach a solution. He said that Walnut Grove heads north and then east toward the dealership. Staff is recommending that developed properties be excluded from the PUD that would include Kentucky Fried Chicken, Chevron, Scrambl'z Diner and the vacant parcel behind it. The recommendation is based on the fact that these parcels are fully developed and that the inclusion of hodgepodge development would make it complex to build a PUD. He indicated that the vacant property behind Scrambl'z would develop as highway commercial.

Council Member Sellers, the Community and Economic Development Subcommittee Chair, stated that the subcommittee felt that the City received significant community input. Although, informal, the subcommittee believed it received specific direction from the Council. The subcommittee felt that it was sufficient enough to warrant an agreement. The subcommittee had a general sense of the concerns of the community and a general sense of what was felt would be an appropriate development in this area. The subcommittee reviewed a variety of approaches which included the Council or subcommittee getting involved, but that it was felt that it would be appropriate to go back to the community to identify agreements and provide significant written assurances to the community on the direction the City would be taking and to provide significant assurances to the business community and property owners on the direction. He stated that the subcommittee felt that this was the next step to take. Once this step has been taken, the subcommittee anticipates returning to the Council with a report.

Council Member Grzan indicated that he has met with the leadership of this community and got a sense that they did not want to see this matter return. He stated that it was his belief that the issue was resolved at one point. He felt that returning to the residents may anger the residents and suggest that the Council did not like their response. He stated that he was somewhat leery about returning to the residents and stir feelings again. He stated that he would be willing to approve the recommended action at this time based on the recommendation of the subcommittee, but expressed concerns.

Council Member Carr felt that the PUD needs to be talked about as there is a lot of miss information and miss representations out there. He felt that this information needs to be clarified. One of the steps to be taken is to clarify the area that is being discussed, should the Council approve the recommended action. The subcommittee is recommending that properties be pulled out of the PUD that are already developed and narrow the size of the PUD/property being discussed. This area would be clearly defined and would be less frightening as discussions take place.

Council Member Sellers said that should nothing were to happen, the community in this neighborhood would remain at risk. They would have no assurances of where future development might occur. He said that there are significant issues that will be hanging over their heads. He felt that the Council needs to get these issues resolved. The City needs to explain what will or will not develop in the PUD. It is his hope that the subcommittee's report will answer a lot of the questions and that once the PUD has gone through the Council process, the questions will be resolved once and for all as a goal.

Mayor Kennedy stated that it was his understanding that the Planning Commission subcommittee working on this item has finished their work.

Council Member Sellers said that the Planning Commission subcommittee had undertaken the initial work. However, things were placed on hold last fall for a variety of reasons. He said that there were some areas of impasse. There was also a municipal election held and that several individuals did not believe that it made sense to move forward. The subcommittee felt that a change in circumstances and a change in direction from the Council and further assurances of where the City will want to go were significant developments. He said that the subcommittee believes that it makes sense to have staff wrap up the matter at this time.

Mayor Kennedy felt that closure was needed with respect to the Planning Commission subcommittee.

**Action:** *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0): 1) **Directed** Staff to Meet with the Neighborhood Residents and Property Owners, as needed, in the Walnut Grove Area to Discuss Issues and to Report back to the Council Community and Economic Development Committee Regarding the Discussions; and 2) **Directed** Staff to Process a Planned Unit Development (PUD) Amendment to Remove the Existing Developed Properties South of Walnut Grove Drive from the Existing PUD Zoning.*

## ***City Council and Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:** *On a motion by Mayor Pro Tempore/Vice-chairman Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 12 and 13 as follows:*

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12. **INVESTMENT POLICY UPDATE**

**Action:** 1) **Adopted** the Updated Investment Policy for the City; and 2) **Adopted** the Updated Investment Policy for the Redevelopment Agency.

13. **JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF APRIL 20, 2005**

**Action:** **Approved** the Minutes as Written.

## ***City Council Action***

### **PUBLIC HEARINGS:**

14. **ZONING AMENDMENT APPLICATION, ZAA-89-16: CHURCH-LaBRUCHERIE – Ordinance No. 1723, New Series**

Director of Community Development Molloy-Previsich presented the staff report for the Planned Unit Development (PUD) district approved in 1989. The PUD established a precise development plan for an 8 building, 70,000 square foot industrial complex. She indicated that the PUD did not specify allowable uses. Currently, the uses are those allowed in the light industrial (ML) zoning district. She stated that only the two lots facing Vineyard Boulevard have been developed with 9,000 square foot buildings on each parcel. The other six parcels remain vacant. She said that in order to better market the project; the property owner is requesting amendment to the PUD to identify permitted and conditional uses. She clarified that the proposed ordinance would allow as principal permitted uses those listed in the ML district in addition to other specified uses. She informed the Council that on a 3-2 vote, the Planning Commission recommends Council approval. She stated that the dissenting Commissioners expressed concerns about having trade/business schools and commercial athletic facilities as permitted uses. These Commissioners felt that these uses should be conditionally permitted uses. She recommended that the Council introduce the ordinance.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1723, New Series.

**Action:** On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1723, New Series, by Title Only, as follows: ***AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 619, NEW SERIES, AND ORDINANCE NO. 955, NEW SERIES, ESTABLISHING A LIST OF PERMITTED AND CONDITIONAL USES ON A 4.8 ACRE INDUSTRIAL PLANNED UNIT DEVELOPMENT ON THE WEST SIDE OF VINEYARD BOULEVARD, NORTH OF VINEYARD COURT. (APN 817-02-055 thru 062), by the following roll call vote:***



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*AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**15. COMMUNITY DEVELOPMENT PROCESSING FEE ADJUSTMENTS – Resolution No. 5902**

Director of Finance Dilles indicated that in May 2002, the City's consultant, Maximus, made a presentation to the Council and presented it with a study of fees that the City was charging. Maximus compared the fees in affect at the time to the cost of providing services associated with the fees. Maximus determined that some of the City's fees were significantly too low based on the cost it was incurring, particularly in the community development processing fees. At that time, working with the consultant, staff proposed to the Council that fee increases be limited to no more than 20%. He indicated that the Council approved the increased, limiting the increase to 20%. He stated that staff met with various members of the development community and home builders association to discuss the proposed fee adjustments and receive their input. He stated that staff returned to the Council in 2003 and 2004 with proposed fee increases in order to move toward full cost recovery; a policy of the City and Council. However, the Council and staff wanted to be careful about how much increase to approve as the City did not want to adversely affect the development community, or the local economy. He stated that staff is prepared to recommend the final components of the fee structure to bring it up to full cost recovery in the areas of planning and engineering fees. He requested the Council approve an increase in July 5, 2005 and July 1, 2006. Following these increases, if adopted, the City would be in a position to achieve full cost recovery; moving to the future knowing that given the current structure, the City would be providing the funding necessary to be able to provide the services that the community needs.

Mayor Kennedy indicated that he received an e-mail from Planning Commissioner Joe Mueller regarding the Urban Limit Line Study and using the General Plan Update fund. Mr. Mueller is suggesting that this fund be used for the southeast quadrant industrial land study. If there is to be a southeast quadrant area plan, Mr. Mueller requested that sufficient funds be placed into this fund to cover these costs.

City Manager Tewes noted that the issue before the Council is the fees themselves. He recommended that the request be considered as part of the budget process as staff is not recommending that appropriations be made into this fund or using the fees. Staff is merely recommending that the fee rate structure be approved by the Council.

Mr. Dilles said that there is a difference between the general plan update fund and some of the fees being recommended for revision this evening. He said that there is a 5% surcharge on building and planning fees that developers pay. As fees are adjustment, there would be a marginal increase in the general plan update fees as well.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Council Member Grzan requested that the e-mail from Mr. Mueller be made available to other Council members. He inquired as to the need to approve the increased fees for July 1, 2006 at this time.

Mr. Dilles responded that a two year fee increase is proposed at this time in order to have a definitive plan to get to the point of full cost recovery. He said that staff felt that it would be easier to bring both fee increases at this time as the Council has already approved three fee increases in the past three years.

City Manager Tewes noted that this would be the fourth increase. As an alternative, staff could recommend that the Council approve the entire amount in one action this evening in order to achieve full cost recovery, but is recommending full cost recovery over a two-year period.

Council Member Tate felt that it was important for the Council to make a commitment to reach full cost recovery, approving both step increases this evening.

Council Member Carr agreed that the Council needs to make a commitment to full cost recovery. He felt that the developers need to have some predictability and certainty of what their fees will be versus what will be the political whims of the Council this year and following years. Having this certainty will help developers in their planning process.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Adopted** the Resolution No. 5902, Revising Fees and Services Charges.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **16.     INDEPENDENCE DAY INC. (IDI) AND MORGAN HILL MUSHROOM MARDI GRAS EVENTS**

Mayor Pro Tempore Tate stated that he would be recusing himself from this item as he is a board member for IDI.

Council Member Sellers stated that Council Member Carr took the lead on this issue and felt that it would be appropriate for him to make the subcommittee report.

Council Member Carr said that the Community and Economic Development Subcommittee volunteered to take on the request for funding by the Mushroom Mardi Gras. He indicated that at the last Council meeting, the Council gave the subcommittee a ceiling of \$16,000. The subcommittee has returned with what has been the practice of the City Council that the services that IDI provides to this community are unique and focused on community benefit. He said that there has been an expectation of \$11,000 coming out of the community promotions budget going to IDI. The subcommittee is recommending that the Council continue to fund IDI. In addition to funding, IDI typically requests significant in kind staff support for events that occur over the Fourth of July programmed days. The subcommittee is recommending that these in kind services continue this year with an expectation that this is the final year that the City absorbs the cost for in kind support. IDI, in subsequent years, needs to build this into their

request to the City. Regarding the Mushroom Mardi Gras, the subcommittee is recommending a one time contribution of \$5,000 in funding in recognition of moving their program to the downtown as a result of some of the work taking place at Community Park. It is the subcommittee's hope that the Mushroom Mardi Gras will be successful and have a long term partnership with the downtown for their program. He stated that the Council is engaged in discussions for contribution to the Mushroom Mardi Gras that may result in the City not having to contribute to this programming if the contribution comes through.

In response to Council Member Grzan's question, Council Member Carr indicated that he was not aware as to the cost for in kind services. The in kind services would be in terms of police and public works services. The subcommittee is recommending that the City provide support services, but recommends IDI build this into the cost that they are requesting.

City Manager Tewes said that in kind services range between \$10,000 and \$12,000 in cost to the City.

Council Member Carr stated that the City needs to start the discussion about next year's funding request now as the City cannot wait until April and the City is deep into its budget cycle. The City needs to build all the costs together so that one comprehensive request comes to the City that it can consider rather than in different pieces.

Council Member Sellers recommended that as part of the budget process, the City give additional specificity to the community promotions budget. Funding amounts to each group to be specifically identified so that non profit community groups can plan their events. If there are additional funds that the Council wants to set aside that are not earmarked for something specific, it should so be indicated. He suggested that this process be incorporated into the budget process this year.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:** *On a motion by Council Member Carr and seconded by Council Member Grzan, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent: 1) **Allocated** \$11,000 from the Community Promotions budget to IDI. In addition to this cash donation, the City is to provide in kind support; and 2) **Allocated** \$5,000 to Mushroom Mardi Gras as a one time contribution.*

Mayor Pro Tempore Tate resumed his seat on the Dias.

## **17. MORGAN HILL LIBRARY – APPROVAL OF SCHEMATIC DESIGN**

Recreation and Community Services Manager Spier stated that a presentation was made to the Library Commission on Monday night. She indicated that a supplemental staff report has been provided to the Council that includes a recommendation from the Library Commission. She stated that the Library Commission agrees that the schematic design has merit and recommends to the Council that it is reasonable to proceed with the design as presented. However, they had a series of items that need to be addressed by the Council which have been included in the staff report. She introduced the design team

who have been working on the 28,000 square foot library project: Chris Noll and Meredith Marschak with Noll & Tam Architects; Gary Dam, construction manager with TBI; Sara Flower, Santa Clara County Librarian; Rosanne Maseck, Community Librarian; Jim Dumas, City senior project manager responsible for the design phase; and Glenn Ritter, City construction manager. She indicated that she is the principal project manager. In order to maintain the schedule, staff is requesting Council approval of the 28,000 square foot schematic design, direction regarding Leed sustainability, and amendment to the contract with Noll and Tam Architects.

Chris Noll addressed the schematic design for the new library, including the Leed evaluation process. He stated that the design team evaluated a range of architectural, site design and engineering aspects of the project. He noted that the design team did not have a large budget and that the design team made a series of decisions and improved the performance of the building. He highlighted some of the processes (e.g., balanced grading on site, site water retention accommodated on site, drought resistant plantings incorporated, additional building insulation, daylight incorporated, glazing is shaded, use of a four pipe water cooled HVAC system with long term energy savings, low water usage plumbing features, indoor air quality specifications, and fine tuning the building to make it operate as intended). He said that up to this point, this is not a Leed certification process. The design team was asked to avoid the cost of design and documentation as well as additional construction costs and the time it would take to perform a Leed process. The design team decided to have an alternative process whereby you can achieve all the value of a Leed process without having to go through the process itself. He addressed the budget for the project, indicating that he has been working closely with TBI in order to make decisions that will result in the project staying within budget. He indicated that the site and the building designs have been simplified. The building systems, materials, and finishes have been studied in order to achieve the best value. He said that the project is moving ahead and is being kept on a tight schedule.

Meredith Marschak addressed the site plan for the library as well as the master planning concept for the civic center site. She indicated that the design of the library retained some of the Proposition 14 design. It is a goal to maintain a single site and not solve the grading problem by building a retaining wall and having an upper and lower site. A gentle continuity would be maintained between the lower site and the upper site. She addressed the distance issues raised by the Library Commission. She addressed the proposed landscaping and lighting for the site with safety in mind.

Mr. Noll addressed the building elevations/details, including access and programming areas. He said that the design and elements took the budget into account; utilizing the civic center site.

Mayor Kennedy noted that it was originally planned to have a tile roof feature on the building, but that it was eliminated due to its cost. He inquired as to the cost to reinstate the tile roof material.

Mr. Noll said that he would have to return with cost estimates, but guesstimated that it would add hundreds of thousands of dollars in costs, depending on how much of the roof would utilize tile material.

Council Member Grzan inquired as to the possibility of using drought tolerant native California plants in the landscape design.

Ms. Marschak said that it is proposed to use all drought tolerant plants, including native California drought tolerant plants. She indicated that very little turf is to be used and that low growing groundcover would be used as it is water efficient. It is proposed to maintain the existing turf between City Hall and the existing library, extending the turf into the circle as a formal element. As you get closer to the west side of site, near DeWitt, a transition would be made to using low growing groundcover materials instead of turf as it is lower in water consumption and maintenance. She stated that she is very conscience about the use of California native plants and what would look good all year round.

Council Member Grzan noted that El Toro is nearby and felt that it would be appropriate to match the native fauna in place. This would result in a natural relationship between the proposed landscaping and El Toro's native fauna. Regarding the interior portion of the building, he stated that he understands the schematic design. However, he felt that the design is lacking in programming. He views this to be a passive facility and does not see the concept of a learning center incorporated. He felt that the facility lacked an activity room that includes sinks and other items where children can build and learn things; including demonstrations. He stated that he would hate to miss an opportunity for a library of tomorrow being active versus a passive facility. He sees the design as very traditional for a library.

Ms. Flower felt that Council Member Grzan's comments were well taken. She noted that the community originally identified the need for a 40,000 square foot facility that included the activities identified by Council Member Grzan. By reducing the size of the building to 28,000 square feet, it resulted in compromises being made. She said that it is being proposed to bring these types of activities into a large program room. By expanding the program room, it would allow these types of activities to take place. Desired is a training room for use of the internet and a library data base. She said that this program element was not included based on the amount of space available.

Council Member Grzan noted that the multi purpose room could be used as an active learning room and felt that additional rooms would have allowed for active learning to take place. He said that learning is an active process, and did not believe that the building reflects this.

Council Member Carr said that everyone needs to keep in mind that this community has built and continues to build community facilities. He felt that the Community & Cultural Center was built and designed for active activities as a learning center. He said that when the library facility expands, programming can be expanded.

Council Member Grzan felt that the link would be a wonderful resource that could take place on the library floor, a place where children can learn. He sees the concept of a learning center as being appropriate for the library. Not having appropriate funding results in making serious choices about the library and what it should/could be. He said that settling for less is troublesome for him. Not having the appropriate funding will result in building a library facility that is less than what is desired.

In response to Council Member Sellers question, Ms. Flower stated that the stacks in the children's side would be lower than that in the adult side. The design team looked closely at the design to make sure that sight lines were not lost.

Council Member Sellers inquired whether there were other elements, on the children's side, that would help the children feel that they are in a quieter place. He felt that the design appears to be linear.

Ms. Flower said that one of the concerns expressed by the community is the noise levels in the library. A way to address this concern is to have a group study room to draw some of the noisier patrons into this room to try and maintain a quiet area throughout the library. It was her belief that glass dividers would be used to separate the children's from the reference area.

Mr. Noll said that a way to keep noise levels down is to close some of the areas so that it is not as noisy.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Mayor Kennedy said that in looking at the exterior of the building, it does not impress him. He wondered if the budget was so much of a constraint that corners were cut on elements that would have otherwise provided a better exterior appearance.

City Manager Tewes said that it was a direction of the Council that the budget was important and that the design team met the Council's budget direction.

Mr. Noll said that the budget was an important factor. In looking at the prior design with the red tile roof, spaces, the circular elements, etc., the design team decided that it needed to be realistic about the budget as it was a high priority of the Council. The design team made decisions that it would not proceed with a traditional scheme. It was felt that you can get more for your money with a modern look. The design team did not feel that it would compromise the overall quality; acknowledging that it is a different look. He said that the design team is excited about the new design. He said that the design team would be looking at different ways to deal with these issues. He felt that the small scale design does not give a true feel of the design. He indicated that the design team did not want to design one huge building, but understood that the inside needs to have an uninterrupted open space for library staff reasons. He said that the design team remains excited about the design. It will not be the traditional building like the other two buildings on site. The design will have richness and a relationship with the building. He stated that he is looking forward to the next design presentation to the council where the design team will have had a chance to work on the details, design and refining the proportions.

Gary Dam, TBI, stated that the design team was fighting with the two distinct budgets presented: the site work and the building budgets. He said that the site work demanded more money. The design team needs to make sure that it is making good use of the money to encompass all the site work. Instead of exporting 30,000 cubic yards of soil to make the site work, thought was given to raising the site. He said that Mr. Noll and the design team were coming up with ideas for the building, recognizing that if you proceed with a tile roof system it would result in a number of factors (e.g., structure would change, design of building would change). He stated that he could not speak too much about the design portion, but is excited about the design.

Mayor Kennedy said that it is his hope that as the library gets more into the design phase, the facility would come alive. He said that it is difficult to achieve appreciation for the building based on pictures and a small model.

Mayor Pro Tempore Tate said that he understands that the book drop location has been controversial. It is his understanding that the book drop is desired to be located in an area that is optimal for operations. He felt that the design needs to include a feature that clearly demarcates the book drop location. He noted that the Library Commission expressed concern whether enough attention was being paid to room for collection. He did not understand what this concern entailed.

Ms. Flower said that in the existing facility, the collections area has overtaken the public spaces over the years. She said that there is very limited seating area and very limited access to public internet terminals. The design team tried to reverse this situation and focused the design on opening up the public spaces to provide additional public computers for internet terminals and additional seating. The group study room will try to address some of the current noise issues by having a larger program room. The design team focused on growing the public spaces and managing the collection areas.

Council Member Tate expressed concern that there are other communities such as Los Altos and Saratoga that have 2-3 times Morgan Hill's circulation. He felt that collections feed directly into what the circulation is.

Rosanne Macek, Morgan Hill librarian, felt that when you have public spaces, you have a lot of opportunities for display and stimulate circulation. This is another way to grow the collection without impacting shelving.

Council Member Sellers felt that Leed is an admirable goal. However the paperwork and formality of Leed is less important than trying to adhere to the principles that the design team attempted to instill. He said that he is more excited about the design than he thought he would be. He felt that the height variation and the use of light will be dramatic, significant and attractive elements. The entryway gives you a sense of place and where you are. He liked the sight line elements for the adults and the children. He indicated that he was ready to approve the schematic design. Regarding the Leed design, it should be the direction the design team follows, short of preparing the paperwork.

Council Member Grzan said that in looking at the schematic design, he finds missing a warm fireplace area with couches where one is welcomed and can read a book. He did not believe that the facility provides warmth. He acknowledged that the design is within the Council's scope and within budget. He is willing to move forward and approve this, reluctantly, but that it is his hope that in the future expansion, important and essential elements could be added back into the design. He said that the exterior has an awkward feel to it and does not blend with the existing buildings or ties in with the surrounding community.

Council Carr stated that he likes the unique and different design. He felt that the design would add to the entire civic center plaza. He was impressed by the amount of time and input that has been given to the programming and the design by the professional library staff. He appreciated their professional

comments. He also appreciated the work of the Morgan Hill Library Commission in reviewing the schematic design. Therefore, he would support taking action this evening.

Mayor Kennedy said that he was also impressed with the level of hard work and involvement by the Library Commission, the Librarian and the Library Authority staff. Function wise, it was his belief that the library would work. It was his hope that the design team will find elements that would make the building look attractive.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Schematic Design.*

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Directed** staff to remain on the same Leed path.*

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Authorized** the City Manager to Prepare and Execute a Second Amendment to the Contract with Noll & Tam in the Amount of \$171,753, Subject to Review and Approval by the City Attorney.*

**18.    SETTING OF ANNUAL PUBLIC HEARING FOR FOX HOLLOW-MURPHY SPRINGS LIGHTING AND LANDSCAPE ASSESSMENT DISTRICT – Resolution Nos. 5903, 5904 and 5905**

Deputy Director of Public Works Struve presented the staff report, indicating that a revised resolution has been provided to the City Council that reflects the correct public hearing date.

Mayor Kennedy indicated that he resides within 300 feet from an assessment district. Therefore, he would be stepping down and outside the Council Chambers.

Mayor Pro Tempore Tate opened the floor to public comment. No comments were offered.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council unanimously (5-0) **Approved** Resolution Nos. 5903, 5904 and 5905, Setting the Annual Public Hearing for the Fiscal Year 2005-2006 Fox Hollow-Murphy Springs Lighting and Landscaping Assessment District, amending the resolution to reflect the correct meeting date.*

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council unanimously (5-0) **Directed** the City Clerk to Notice a Copy of the Resolutions, as noted.*

Mayor Kennedy resumed his seat on the Dias.



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## **19. ECONOMIC DEVELOPMENT INHIBITORS**

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that in March 2005, the City Council adopted a goal that stated that the Council would agendize economic development inhibitors as identified in the 2005 budget. The Council wanted to consider changes in policies and procedures. He indicated that this task was assigned to the Council's Community & Economic Development subcommittee to develop recommendations. He stated that the subcommittee is recommending approval and directing staff to implement the recommendations as presented this evening. He identified the inhibitors that were thought to hamper private development and were under the control of the City; including recommendations to address the inhibitors as listed in the staff report. He identified next steps which include revisions to existing ordinances. This will require staff to return to the Council for approval of the ordinance amendments. He said that the members of the Chamber of Commerce's Economic Development Partnership have indicated that they would like to comment on the City's recommendation. He said that there is time to discuss and incorporate the Chamber's comments into the recommendation. Further, staff will report back to the Council's Community and Economic Development subcommittee, consisting of Council Members Carr and Sellers, with a schedule for implementing the recommended changes.

Council Member Sellers stated that staff is to be commended for undertaking this assignment and pushing this item forward. He said that this would be an ongoing process. He felt that the Council needs to be actively involved with the Chamber's Economic Development Committee to make sure that the City does not miss any other inhibitors. He felt that the recommendations would be positive steps and would set the climate for economic development in the community.

Mayor Pro Tempore Tate acknowledged that this would be an ongoing process to address economic inhibitors and that there would be an opportunity for the public to bring forward additionally perceived inhibitors. He felt that ongoing dialogue makes sense and to move forward in order to address inhibitors through the subcommittee.

Council Member Sellers concurred that there would be ample opportunities to bring forward additional perceived inhibitors.

Council Member Grzan referred to inhibitor 7 that recommends modification to ordinances to give staff more discretion in specific areas such as the downtown. He requested clarification as to the intent of this statement.

Mr. Toy stated that the existing ordinance requires that the ARB review all aspects of development with exceptions such as doors and windows. While the ARB has created a subcommittee structure, there is still time and cost involved. It is being recommended that the ordinance be amended to allow staff to have more discretion for items in the downtown area. It is his assumption that staff will work closely with the ARB to come up with some parameters on how this can work.

Council Member Carr clarified that the staff discretion being recommended would be within the parameters of the existing Architectural Review Handbook and the Downtown Plan. He said that it is

within specific areas in town where the City has established guidelines, but yet, there are multiple review processes to go through when the City already has guidelines in place that should be adhered to.

Mayor Kennedy opened the floor to public comment.

Dan Ehrler stated that the Chamber of Commerce expresses its appreciation to the Community & Economic Development Subcommittee and City staff for the effort and time put into this subject. He felt that identifying problems/solutions is proactive and a positive way of approaching the future and doing something about it now. He stated that the Chamber of Commerce looks forward to participating in any way possible in the decision making process.

No further comments were offered.

Mayor Kennedy thanked the Community & Economic Subcommittee and staff for coming up with recommendations to eliminate or reduce some of the economic development inhibitors.

Council Member Sellers referred to the first inhibitor, impact fees. He noted that it is being suggested to allow for a longer period of time for repayment of City fees. He stated that he would like to look at the suggestion of bonding or other opportunities that would allow repayment even further. He felt that there are some projects where a longer repayment period would be highly desirable. He did not believe that the Council would want to extend the City's involvement, but felt that if there is a way to get fees paid and allow the applicant to finance the fees in a different way. It may make their businesses and/or properties more valuable. He indicated that he would pursue this suggestion with staff, the subcommittee and the City Council.

**Action:**        *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** and **Directed** Staff to Implement Recommendations Made by the Community and Economic Development Committee Related to Economic Development Inhibitors.*

## **20.    PARKS AND RECREATION COMMISSIONER RESIGNATION**

Mayor Kennedy stated that he spoke with Parks & Recreation Commissioner Craig van Keulen earlier, noting that he was the next in line to be appointed to the Parks & Recreation Commission. Subject to Council concurrence, he stated that he would like to recommend the appointment of Mr. van Keulen to fill a Parks & Recreation commission vacancy.

Council Member Sellers said that he spoke with Parks & Recreation Commissioner Jensen who believes that it would be the most prudent way to fill the vacancy. He recommended that staff look at the term and looking at ways of making Mr. van Keulen's term a 2-year term as there is a scope of work that the Parks & Recreation Commission will be undertaking that needs tenure to this commission. He felt that Mr. van Keulen would be able to assist in the implantation of the scope of work.

Council Services & Records Manager Torrez informed the Council that staff has included a workplan item for Fiscal Year 2005-06 to return to the Council with an ordinance amendment for Council consideration that would change the appointment terms from two to four years for boards and commissions. She recommended that the Council await the outcome of the proposed ordinance amendment regarding the length of terms and Council direction as it may be feasible to extend terms on the commission beyond two years.

Mayor Kennedy concurred with waiting until staff returns with a proposed ordinance text amendment as it relates to term lengths on boards and commissions, as suggested.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Accepted** the Resignation of Parks and Recreation Commissioner Don Jensen.*

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** the Mayor's appointment of Craig van Keulen to the Parks and Recreation Commission, filing a term expiring June 1, 2006.*

## **21. CITY ATTORNEY SERVICES**

City Manager Tewes indicated that the Mayor requested that staff place the discussion about the Council's expectation on how to fill future city attorney services (e.g., full time city employee or some form of contract). He indicated that he presented the Council the staff work conducted five years ago when the Council was in a similar situation. He requested that the Council provide direction on additional information and/or analysis it seeks in order to support its decision.

Mayor Kennedy indicated that he requested that this item be agendaized to allow the Council to initiate the discussion of the process on city attorney services. He requested that council members bring forward their thoughts at this time.

Council Member Sellers felt that the newspapers have raised the issue and asked whether the Council has given thought to filling the City Attorney position. He noted that the Council conducted a very extensive process in the early part of his term of office. The Council made the determination to hire a city attorney staff member. He said that the scope of work for a City Attorney's office is a variable. He felt that this City/Council tends to be more active for a variety of reasons as it is a growing community and it has a lot of different issues on its plate. This results in having a lot of legal needs. He said that he would like to keep legal costs down by preventing lawsuits to be filed in the first place and by taking safety initiatives to prevent lawsuits. He stated that he is leaning toward continuing with an in house city attorney. He said that he would like to discuss what it might take to begin the process of recruiting for an in house attorney at a future council meeting.

Mayor Pro Tempore Tate agreed that the Council went through a process several years ago that led the Council toward having a full time in house city attorney for the reasons stated (e.g., City has several cases). However, he felt that this would be a good time to take a break and step back. He stated that he

was not ready to look for an attorney at this time. If there was some impetus that stated that the Council had to retain the services of a city attorney, he would agree to move forward. However, he noted that the City has legal representation with contract attorneys Dan Siegel and Bill McClure. He recommended that the Council move slowly regarding a determination of a full time in house attorney versus a contract for legal services. He further recommended that the Council look at the pros and cons of both sides. He said that logically, the Council made the right decision last time and that the Council wants to make the right decision again. However, he would like to review some of the factors that are included in the contract to make sure that the process is done correctly.

Mayor Kennedy said that he was on the Council when the City contracted for attorney services and that the City ran into a major problem. He said that the backlog of cases had gotten up to 33 cases. In one case, the City missed a deadline due to a statute of limitation situation, and that this cost the City approximately \$1 million due to the services of a contract attorney. The City had to sue for malpractice at that time. He felt that the City has had good successes with the city attorneys hired. He acknowledged that the City has experienced problems recently, but that overall, the City does better with an in house attorney that can manage the case load and variety of special circumstances (e.g., redistricting, power plants, perchlorate, etc.). He felt the City has faced every type of legal situation that could be imagined. Having an in house attorney is an important decision that the Council has to deal with. He wanted to make sure that the Council starts the process and that he would agree to move slowly to make sure that it is done right and that the City finds the best qualified attorney to fill the City's needs.

Council Member Carr stated that he was not on the Council when Council Members conducted the process of hiring an in house attorney. He does not feel an urgency to make a decision one way or the other at this time. He felt that the opportunity has presented the Council to take a look at whether it would be better to have a full time in house attorney or contract with a legal firm. He requested that staff provide a review as to the legal services that are needed in the City and what the City would be facing in the next year, five years, 10 years, etc. He would like to know when the Council needs to move things forward in order to make a decision. He felt that the Council still needs to talk about the budget, cost implications associated with an in house or contract attorney services, and the cost for recruitment. He felt that the memorandum produced 5 years ago needs to be updated to today's standards that describes where the City is headed and the needs of the City and staff. This would allow for the meticulous process that the Council needs to undertake.

Council Member Grzan felt that it was important to have an in house attorney; one that City staff can work with and confide in; an attorney who would be available at all times. He recommended that the Council take a careful look at what this means and that the Council defines what a city attorney is to be, identifying the scope of work, expectations, performance, a contract, etc. He recommended that the Council do a good job in selecting an in house attorney and bring this person on board. He felt that the City would receive service from an in house attorney and that there would be a greater tie. He also felt that it would be good to have an attorney who resides in the City and relates to the issues/problems the City faces; having a good understanding of the community. He agreed to move slowly, but that it was important to bring someone on board as quickly as possible.

**Action:**        *The Council provided the above comments/directions.*

**22. RECONSIDERATION OF FISCAL YEAR 2005-2006 OPERATING AND CAPITAL IMPROVEMENT BUDGET WORKSHOP DATE** (Continued from 4/20/05)

Mayor Kennedy stated that he would withdraw his request to change the May 20, 2005 budget workshop date. He indicated that other Council members have indicated that their schedules have been committed based on the advanced notification for this particular schedule. He stated that he would submit his comments on the budget in writing to the City Manager upon his return.

**Action:** Request **withdrawn**. No action taken.

**FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

**ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 9:58 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**